

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
)	
Telecommunications Relay Services,)	CC Docket No. 98-67
and Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	CG Docket No. 03-123
)	
)	

**PETITION FOR CLARIFICATION
BY ULTRATEC, INC AND SPRINT CORPORATION**

I. Introduction

Ultratec, Inc. and Sprint Corporation (“Petitioners”) jointly submit this petition seeking clarification that CapTel services are compliant with the FCC’s new three-way calling mandate so long as these services handle three-way calls, regardless of the actual method used to set up these calls.

In its Second Improved Telecommunications Relay Services (TRS) Order released on June 17, 2003, the Federal Communications Commission (FCC) issued a rule adding three-way calling to its list of mandatory minimum TRS features.¹ This mandate is scheduled to take effect on February 24, 2004. On September 24, 2003, AT&T filed a Petition for Limited Reconsideration and for Waiver, which among other things, requested the FCC to extend the February 2004 deadline for the three-way calling mandate, subject to additional clarification by the Commission on the set up of and billing for these calls.² Specifically, AT&T explained that although end-users may initiate three-way calls by bridging two lines together via customer premises equipment or

¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities: Americans with Disabilities Act of 1990*, Second Report and Order, Order on Reconsideration and Notice of Proposed Rulemaking (“Second Improved TRS Order”), CC Docket No. 98-67, CG Docket No. 03-123, FCC 03-112, 18 FCC Rcd 12379, released June 17, 2003 at ¶73, adding 47 C.F.R. §§64.601(16) and 64.604(a)(3)(vi).

through a customer calling service (CCS) provided by a local telephone company, its TRS centers did not have the ability to use the CCS feature of the local network to set up the two legs of these calls. AT&T indicated that making the necessary modifications to set up these calls via its relay centers would necessitate the resolution of a number of outstanding issues. AT&T requested a waiver of the deadline for three-way calling until such time that the Commission resolved these various issues.

In comments submitted in response to AT&T's petition, both Ultratec and Sprint supported AT&T's request on three-way calling, specifically with respect to CapTel services.³ Although, at the time, both Ultratec and Sprint expressed support for a permanent waiver of the three-way calling rule for CapTel, further reflection suggests that clarification by the Commission that CapTel services are already in compliance with the FCC's three-way calling standard is appropriate.

II. The FCC's Second Improved TRS Order Does Not Specify the Manner in Which Three-Way Relay Calls Must Be Set Up.

On March 6, 2000, the FCC released its First Improved TRS Order, accompanied by a Further Notice of Proposed Rulemaking.⁴ At that time, the Commission noted that its rules required TRS to be capable of handling any type of call normally provided by common carriers, and asked for input on the extent to which it should mandate the handling of certain types of calls previously not required of TRS providers, including three-way calling.⁵ What the Commission learned in response to this request, was that although some providers were already offering three-way calling, others were not. When, in its Second Improved TRS Order, the Commission decided to mandate three-way calling as a technically feasible TRS

² AT&T Petition For Limited Reconsideration and For Waiver ("AT&T Petition") at 8 (September 24, 2003).

³ Ultratec Reply Comments at 2-4 (October 28, 2003); Sprint Comments at 6 n. 4 (October 20, 2003).

⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking ("First Improved TRS Order"), CC Docket No. 98-67, FCC 00-56, released March 6, 2000.

⁵ *Id.* at ¶138.

standard, it did not dictate a prescribed method of offering this calling feature. Rather, the wording of the Order makes clear that the FCC merely offered suggestions as to how this feature could be achieved. Specifically, the Order states that three-way calls are “*generally* set up in one of two ways” – by having the CA set up the call at the relay center or by having the TRS user “connect to two telephone lines from his or her premises by using the telephone’s switch-hook (or ‘flash’) button.”⁶

The Order does not exclude alternative means of initiating these calls, so long as the ultimate objective – that relay users be able to converse with more than one party during a telephone call through the relay service – is achieved. Nor does anything in the wording of the actual rule itself specify the manner in which the three-way connection is to be made. Rather, the rule simply defines three-way calling as “[a] TRS feature that allows more than two parties to be on the telephone line at the same time with the CA,”⁷ and merely directs TRS providers “to provide . . . three-way calling functionality.”⁸ By the Order and the letter of these rules, CapTel relay services are already in compliance with the three-way calling mandate because as discussed below, it has, and will continue to handle three-way CapTel calls.

III. It is Not Technically Feasible for CapTel Users to Set Up Three-Way Relay Calls From Their Captioned Telephone Devices or for Communication Assistants to Set up These Calls from CapTel Centers.

CapTel technology does not permit CapTel users to set up three-way calling from their CapTel (captioned telephone) devices. The reason for this is that the CapTel VCO service uses simultaneous voice and data protocol based on the V.32 bis standard.⁹ This results in the

⁶ Second Improved TRS Order at ¶73 (emphasis added).

⁷ 47 C.F.R. §64.601(16).

⁸ 47 C.F.R. §64.604(a)(3)(vi).

⁹ The Commission acknowledged this fact in its ruling authorizing reimbursement for CapTel services. *In the Matter of Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and*

CapTel technology being dependent on a constant data connection to remain connected with the other party. During a CapTel call, if the individual using the captioned telephone attempts to establish a three-way call using the hook-flash functionality, the data connection will be disrupted and his or her device may disconnect from the other party. In addition, if a CapTel user has conference calling capabilities and attempts to conference in a third party from his or her CapTel device, the third party will only hear data connection noise.

Having a CapTel CA initiate the three-way calling feature is also inconsistent with CapTel technology, as the very nature of this service is one that is “designed so that the user directly calls the other party to the call, with the CA transparent both in the set up and during the call.”¹⁰ As the Commission itself repeatedly noted in its CapTel Declaratory Ruling, one of the most attractive features of the CapTel system is that it excludes the CA from the call set-up function, making the CA “completely invisible” to the CapTel parties.¹¹ The transparent nature of the CA and the CapTel center makes it impossible for that entity to set up a three-way call since the system has no facility for allowing the users to converse with the CA.

IV. CapTel Three-Way Calls May be Set Up by TRS Users Who Use a Switch Hook on Their Conventional Telephones or by CapTel Users Who Use a Conference Bridge

Although Petitioners maintain that the method used to initiate three-way calling is irrelevant, even if the FCC were to interpret its Second Improved TRS Order to require one of the two call set-up methods mentioned in that Order, CapTel services are in compliance with the new rule. One of the methods that is suggested by the FCC is for “the TRS user” to set up three-way calls using a switch-hook feature. By not defining “the TRS user,” the FCC’s

Speech Disabilities, Declaratory Ruling (“CapTel Declaratory Ruling”), CC Dkt 98-67, FCC 03-190 (released August 1, 2003) at ¶53.

¹⁰CapTel Declaratory Ruling at ¶¶48, 50.

¹¹ See, e.g., CapTel Declaratory Ruling at ¶49.

Order leaves open the possibility for any one of the TRS users to a three-way CapTel call to be the

individual that sets up the call in this fashion. So long as one of the individuals to the call has a conventional telephone with a switch-hook feature, all participants to the CapTel call can participate in the conference call, and compliance with the FCC's mandate is achieved. Once the three-way call is set up in this fashion, the individual using the captioned telephone equipment can then either dial into or receive the call along with the other participants to the call.

Alternatively, if the FCC wishes to ensure that the CapTel user him or herself be able to initiate the call, that may be done as well. While it would be pointless for a CapTel user to purchase the switch-hook/CCS feature for a CapTel line that is technically incapable of using that feature, the CapTel user *is* able to purchase from and successfully set up the three-way calling feature through a common carrier on a call-by-call basis through a conference bridge service. All that the CapTel user needs to do is to set up the call through the bridging service, and request all parties to the call to dial into the designated conference bridge telephone number.

Once a three-way call is set up through either of the above methods, the CapTel CA is able to successfully process the call and the CapTel users can effectively participate in the call. In fact, because CapTel calls use speech recognition technology, three-way calls handled through CapTel relay services are often processed far more efficiently and effectively than through traditional text-to-voice TRS.

V. Other Parties Have Supported Flexibility in the Manner of Setting up Three-Way Calls.

The comments of other parties to this proceeding have similarly interpreted the Second Improved TRS Order to allow flexibility in the specific manner by which these calls must be set up. These parties have generally looked to the overall mandate – to provide three-way calling to relay users – and have concluded that so long as that mandate is achieved, the

particular manner in which these calls are set up is not relevant. Hamilton, for example, has commented that it interprets the Order “to require the provision of three-way calling capability *only* to the extent that the TRS end-user has purchased a three-way calling feature from his or her LEC,” (*i.e.*, and not to require the TRS provider to perform the actual three-way call set up).¹² Similarly, SBC has noted that it does not interpret the FCC’s Second Improved TRS Order to require that TRS providers be able to set up three-way calling under both processes – through the CA *and* through the end user’s flash hook.¹³ SBC agrees with AT&T that it may be technically infeasible for CAs to have to set up three-way calls, but asks the Commission to clarify that compliance with the FCC’s rule may be achieved so long as a TRS provider “will “facilitate the call once the TRS user has connected to two telephone lines using the flash button.”¹⁴ As noted above, insofar as one of the TRS users to a CapTel call is able to set up the three-way call using the switch-hook, under the interpretation of the law given by these companies, compliance with the new mandate can be easily achieved for CapTel calls.

It is important to note as well, that TDI, the nation’s leading consumer organization representing the telecommunications needs of people with hearing disabilities, has not opposed the above requests to the Commission for clarification of the three-way calling mandate. TDI notes that “[f]or purposes of functional equivalence, it is not important which of the two ways identified in the Second Report and Order a TRS provider chooses to provide three-way calling. What is critical is that every TRS provider actually provides three-way calling capability.”¹⁵

¹² Hamilton Comments at 5 (October, 20, 2003) (emphasis in original).

¹³ SBC Comments at 2 (October 20, 2003).

¹⁴ Id.

¹⁵ TDI Comments at 8 (October 30, 2003).

Clearly, the underlying purpose of the FCC's Second Improved TRS Order is to ensure that all TRS users be provided with functionally equivalent telephone service, which includes three-way calling. As various carriers, TDI and now Petitioners interpret the rule, the method of establishing these calls is unimportant, so long as consumers can use this calling feature.

VI. Conclusion and Request for an Expedited Decision

Petitioners seek clarification from the Commission confirming that CapTel services are in compliance with the three-way calling mandate. CapTel relay users are able to participate in three-way calls in at least one of two ways: the CapTel user can initiate the call through a conference call bridge arrangement or all CapTel relay participants can join in a call that has been set up by one of the TRS users to the call (through custom calling features provided by a local exchange carrier or through a conference bridge). After the call is initiated by one of the above methods, all parties to the CapTel call can easily and effectively participate in the multi-participant call. Insofar as neither the rule nor the Order establishing the new three-way calling mandate dictates the manner in which the three-way feature must be set up, Petitioners maintain that CapTel services have achieved compliance with the new minimum standard.

Although the implementation deadline for the three-way calling feature is not until February 24, 2003, various providers of CapTel services are scheduled to begin deploying CapTel services shortly after the New Year. Some of these providers are concerned about initiating this service without clear guidance from the Commission on the three-way calling matter. Accordingly, petitioners request consideration of this petition in an expedited fashion,

in order to ensure that CapTel services can be rolled out to consumers as originally scheduled.

Respectfully Submitted,

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